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No. 686

In the Supreme Court of the United States

OCTOBER TERM, 1958

IRVING TAITEL, RUTH TAITEL AND JEROME TAITEL, d/b/a I. TAITEL & SON, A PARTNERSHIP, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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Case:

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Statute:

National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151 et seq.) 2

Section 8(a)(1) 2

Section 8(a)(5) 2

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OPINIONS BELOW

The opinion of the court below (Pet. 17–22) is reported at 261 F. 2d 1. The Board's Decision and Order (B.A. 3–35)[1] are reported at 119 NLRB 910.

JURISDICTION

The decision of the court below was rendered on October 30, 1958. A petition by respondent in the court below for rehearing was denied without opinion December 22, 1958. The decree enforcing the Board's

[1] References designated "B.A." are to the Board's appendix to its brief in the court below.

order was entered on December 31, 1958. The petition for a writ of certiorari was filed on February 6, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Board, in finding that petitioner had engaged in unfair labor practices violative of Section 8(a)(1) and (5) of the National Labor Relations Act, properly discounted petitioner's alleged disavowal of an intent to interfere with its employees' rights under the Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151 *et seq.*) are set forth at p. 23 of the Petition.

STATEMENT

A. *The Board's decision and order.*—In late February or early March, 1956, the Union[2] began organizing the employees at petitioner's Knox, Indiana plant (B.A. 50–51). On March 13, 1956, William C. Jenkins, president and business representative of the Union, Thomas Baker, also a business representative of the Union, and a committee of employees went to petitioner's plant for the purpose of seeing partner Irving Taitel (B.A. 26; 39). Irving Taitel was out of the city but the group did see his son and partner, Jerome (B.A. 26; 39). Jenkins told him that a majority of the production and maintenance employees had designated the Union as their collective bargain-

[2] General Teamsters, Chauffeurs and Helpers Union, Local 298, I.B.T. & H. of A.

ing representative and that the Union wanted to be recognized and to negotiate a contract (B.A. 26; 40). The group was told that they would have to talk to Irving Taitel, and, after a telephone call to him in Louisville, Jenkins arranged for the Union committee to meet with Irving Taitel on March 15 in Knox (B.A. 26–27; 39–40, 42).

Taitel returned to Knox, and on March 14, the day following the telephone conversation with Jenkins and the day before the scheduled meeting with the Union, Taitel walked through the plant talking to the individual employees (B.A. 13; 170–171). One of the employees Taitel talked to was Kenneth Ross. Taitel asked, "Kenny, what's this idea you got in getting this union into the plant?" When Ross replied that he was not making enough money, Taitel told him he had a big opportunity in the plant—that he was going to let Ross take over the job of foreman of the cutting room. Ross' reply was that he could not live on opportunity alone. Taitel then said, "Well, how would you like me to close this plant down and put all these poor old women out of work?" Ross answered that the Union was not just his idea but that the other employees wanted it too, just as well as he did (B.A. 13; 59–60). Later that day Taitel again approached Ross and this time said, "I am going to leave it up to you, Kenny, whether you close this factory down and put all these poor old women out of work * * * I am going to leave it all up to you. I'll be back after a while and I want your answer." When Taitel returned, Ross told him, "I am going to stay with the Union." Taitel's only response was,

"Well, this conversation is over with." (B.A. 13–14; 61.)

Another employee approached by Taitel on March 14 was Cletus Brooks who, like other employees, was wearing a Union button. Taitel asked, "What's your trouble?" and Brooks replied, "Not enough wages, no paid vacations, nor paid holidays like other places were getting." Taitel asked if that was all, and Brooks answered in the affirmative. Taitel then said, "Of course, you realize if the union gets in here we will have to close this plant down and have to throw these poor old women out of work." Brooks said, "That's the risk we'll have to take." (B.A. 14; 62–63.)

Also, on March 14, Taitel made approaches to employees Janie Barnett, Edith Johnson and Arthur Beem, and in each instance after commenting on the Union's campaign, noted that if its organizing efforts were successful, he was going to have to shut the plant down (B.A. 15–17; 55, 72–74). In the course of his conversation with Beem, and on the same day while interrogating another employee, Wilson Beauchamp, concerning his Union views, Taitel solicited the assistance of these two employees to combat the Union's efforts to organize the plant (B.A. 16–17; 66–67, 73–74).

Pursuant to the telephone arrangements that had been made, the following day, March 15, Taitel and Plant Manager Lloyd Kepler met with Union representatives Jenkins, Baker, and a committee of employees (B.A. 27; 40–41). On the ground that he could not do anything without the advice of counsel,

Taitel refused to discuss the Union claim that it had a majority of the production and maintenance employees signed as members and that it wanted Taitel to recognize it and negotiate a contract (B.A. 27; 41–42). Therefore, another meeting was scheduled for Saturday, March 17 (B.A. 27; 42). The following day, March 16, Taitel approached employee Johnson, and in the course of a discussion about the Union, Taitel stated that the Union "wasn't coming in over his dead body, and that he would do like [he] did before, work a few days and * * * get out" (B.A. 15–16; 55–56).

On March 17, the Union committee met with Taitel, Kepler, and Taitel's attorney (B.A. 27; 42–43). When the latter questioned the Union's majority status, the Union offered to permit him to check the authenticity of the signed membership application cards. This offer was refused with the statement that petitioner wanted an election by the Board (B.A. 28; 43–44). Jenkins' further suggestion that an election be held under the auspices of the State of Indiana or a neutral person was also rejected (B.A. 28; 44). The Union then proposed that they enter into an agreement for a consent election to be conducted by the Board, but petitioner insisted that if the Union wanted recognition, it would have to petition for an election and go through a formal hearing and all steps attendant upon a Board election (B.A. 28–29; 44–45). Throughout the course of this meeting, petitioner offered no reason for insisting on a formal Board election other than that it was interested in the guaranty of secrecy of ballot (B.A. 30; 44).

When petitioner refused to reconsider its position that the Union prove its majority by a Board election, the meeting ended (B.A. 28; 45).

The following Monday, March 19, the Union began a strike for recognition that continued until April 10 (B.A. 28, 30; 46–47). A substantial majority of the 96 employees in the unit the Union sought to represent supported the strike throughout the three-week period (B.A. 30).

On April 6, while the strike was in progress, Plant Manager Kepler called at the home of employee Bonnie Cole and asked her to return to work. While talking to her, employees Jean Ols and Freda Stacy came in and Kepler asked all three to return to work (B.A. 19; 108, 110–111). Kepler told these employees that; if they did not return to work and Taitel could not get the plant on a paying basis, he would have to close it down (B.A. 19; 108). Kepler added that he did not care if this happened, because he had another job he could take the next day (B.A. 19; 108–109, 111).

Kepler also visited the home of Cletus Brooks during the strike and sought to induce him to return to work and to bring one or two others back with him (B.A. 20; 63–64). Kepler stated that if the strike lasted much longer, he was afraid both he and Brooks would be looking for jobs (B.A. 20; 63–64).

On April 13, after the strike had ended, Kepler, in the presence of employees Donald Hamilton and Wilson Beauchamp, stated that, "if the union comes in the plant is going to close down" (B.A. 20; 69–70).

By letter of April 26, the Union again demanded recognition and requested petitioner to bargain with it

(B.A. 28; 47 (G.C. Ex. 3)). Petitioner made no reply to this letter (B.A. 28; 47).

The Board found that petitioner violated Section 8(a)(1) of the Act by threatening employees with economic reprisals if the Union succeeded; offering a supervisory job to an employee if he abandoned his union activities; interrogating employees as to their union activities and soliciting employees to abandon the strike. The Board also found that on March 17, 1956, and at all times material hereto, the Union represented a majority of petitioner's employees in an appropriate unit. The Board further found that petitioner violated Section 8(a)(5) of the Act by denying the Union's request for recognition and insisting upon a Board-directed election since petitioner was not motivated by any good faith doubt as to the Union's majority status, but rather by a desire, as evidenced by its coercive conduct, to gain time in which to undermine the Union and dissipate its strength (B.A. 4–6).

The Board's order requires petitioner to cease and desist from its unfair labor practices, upon request to bargain with the Union, and to post appropriate notices (B.A. 7–10).

B. *The opinion of the court of appeals.*—The court below upheld the Board's decision as adequately supported by the record and enforced its order in full. (Pet. 17–22.)

ARGUMENT

Petitioner concedes (Pet. 6) that it was "apparently guilty of interfering with his employees' rights as to union activities, by making threats of re-

prisal * * *." It contends, however (Pet. 6–11), that it dissipated the effects of its illegal conduct and hence there was no basis for the Board's remedial order in the instant case because in two newspaper advertisements, dated March 20 and April 10, 1956, it publicly "disavowed" any intent to interfere with its employees' organizational rights under the Act." The short answer to this contention is that petitioner persisted in its coercive conduct not only during the interval between the two advertisements but also after the second one (*supra*, p. 6). Indeed, in its advertisements, petitioner continued in its unlawful refusal to bargain with the Union and insisted upon a Board election even though, as the Board and the court below found, petitioner did not entertain a good faith doubt of the Union's representative status (Pet. 22). In these circumstances, there was no reason for the Board to give weight to the alleged disavowals which petitioner's contemporaneous misconduct belied.[4] It was for the Board to determine how the effects of unfair labor practices should be remedied. *Franks Bros. Co.* v. *National Labor Relations Board*, 321 U.S. 702, 704.

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[3] The advertisements, in substance, stated that petitioner would recognize the Union if it won a Board election; that it "has not and will not interfere" with the employees' right to join or form a union; and that it might not be able to continue in business if the union placed "any additional economic burdens on it." (App. to Pet. Br. in court below, pp. 1A–4A).

[4] The cases relied on by petitioner (Pet. 10–11) do not hold otherwise. They deal with the employer's duty, if he is to avoid being charged with engaging in unfair labor practices, to take appropriate steps when necessary to dispel any impression among his employees that coercive remarks made by supervisory personnel represent the views of management.

Petitioner's second point (Pet. 12–14), that there was a denial of due process by reason of the fact that the Board and the court below "ignored" its published disavowal of unlawful intent, is in effect a mere restatement in constitutional terms of its first argument. If the Board was justified in discounting the petitioner's avowals, as it clearly was, no constitutional right was impaired by reason of the form in which it put its findings. And, of course, there was no obligation on the court below to make specific reference to an argument which it must have considered insubstantial.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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